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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re D.W. Jr. et al., Persons Coming Under
the Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

J.W.,

Defendant and Appellant.

G039857

(Consolidated with G040159)

(Super. Ct. Nos. DP014296 &
DP014297)

O P I N I O N

Appeals from a judgment and an order of the Superior Court of Orange County, Thomas M. Fiorello, Temporary Judge (pursuant to Cal. Const., art. VI, § 21) and Caryl Lee, Judge. Affirmed.

Neale B. Gold, under appointment by the Court of Appeal, for Defendant and Appellant.

Benjamin P. de Mayo, County Counsel, and Karen L. Christensen and Aurelio Torre, Jr., Deputy County Counsel, for Plaintiff and Respondent.

Michael D. Randall, under appointment by the Court of Appeal, for the Minors.

* * *

These are consolidated appeals from the juvenile court judgment of dependency and a postjudgment order entered on December 13, 2007, and January 31, 2008, respectively. D.W., the father of J.A.W. and D.W. Jr., initiated proceedings in Orange County to dissolve his marriage to J.W., the children's mother, and sought sole legal and physical custody of the children. In August 2006, the father arranged to have the children sent to him from Germany, where they were living with their mother. The family court granted the mother's petition under the Hague Convention on the Civil Aspects of International Child Abduction (the Hague Convention)¹ to have the children returned to Germany for further custody proceedings, and ordered the father to turn the children over to the mother. The father instead turned them over to the Orange County Social Services Agency (SSA), who took them into protective custody and filed a dependency petition on their behalf. After proceedings lasting more than a year, the juvenile court adjudicated them dependents of the court, removed them from parental custody, and restricted the mother's visitation until she completed a residential substance abuse program. Subsequently, the juvenile court issued a restraining order preventing the mother from having contact with the father or the children's foster parents.

In the first appeal, the mother contends the court lacked subject matter jurisdiction to make custody determinations due to the family court ruling. She also claims the court abused its discretion in fashioning the visitation order and denying her

¹ The Hague Convention is implemented in the United States by the International Child Abduction Remedies Act of 1988 (42 U.S.C.A § 11601 et seq.). (*In re Marriage of Eddy* (2006) 144 Cal.App.4th 1202, 1206.)

request for a second independent evaluator under Evidence Code section 730. In the second appeal, the mother contends the restraining order is not supported by substantial evidence. We affirm the judgment and the order.

FACTS

Background

The father and mother began their relationship when she was a 16-year-old student in a California high school where he was a 51-year-old high school band teacher. They married when the mother was 17; their first child, J.A.W., was born in September 1994, and their second, D.W. Jr., was born two years later.

The mother joined the Army in 1997. The next year, she left the father and moved to Texas with the children. She was deployed to Germany in 2002. The children went with her and attended school there from January 2003 to July 2006. The mother was transferred to Iraq for 14 months; she left the children with a child care provider until her return to Germany in August 2004.

J.A.W. and D.W. Jr. were hospitalized in July 2006 due to gastroenteritis. The hospital refused to release them to the mother when they were ready for discharge because the mother was extremely intoxicated, hostile, and behaving in a bizarre fashion; the hospital contacted the military social workers to arrange for the children's care. The social workers' investigation revealed that the mother threatened to harm herself and the children, and she was hospitalized. In cooperation with United States Army officials, German social workers took custody of the children and placed them in a foster home. The mother's commanding officer called the father and told him the German authorities would release the children to him if he went to Germany. The mother also called the father and asked him to get the children out of the hospital. The father traveled to Germany and, after speaking with those involved, arranged to have the children sent to him in Orange County, his place of residence. The children were sent to the father in late July 2006.

The father filed for divorce in August 2006, seeking sole legal and physical custody of the children and requesting an order denying the mother visitation unless she received treatment for her alcoholism and mental health problems. The petition included evidence showing that the mother inflicted mild emotional abuse and mild neglect on both children at some time before she went to Iraq. German social workers also opened a case based on the children's neglect while the mother was in Iraq. And after her return to Germany, a report of neglect was made by the children's school based on the mother's frequent absence from the home and the necessity for her 11-year-old daughter to take care of herself and her younger brother. The Army social services investigated and substantiated the mother's history of excessive drinking. Its report recommended that the mother receive treatment for mental health problems and substance abuse and education in parenting skills because it believed the children were at risk.

On October 20, 2006, the mother filed an order to show cause seeking the return of her children to Germany under the Hague Convention and asking that they be placed in protective custody pending the hearing. She accused the father of violence towards her and the children and of engaging in sex with minors. She declared his three previous wives were high school students when he began relationships with them. The father disputed these allegations.

On October 24, 2006, the family court granted the mother's Hague Convention petition, finding that the father had wrongfully removed the children from Germany and ordering that the children be returned to Germany for further custody proceedings. It assumed emergency jurisdiction under Family Code section 3400 et seq. and removed the children from the father, determining that "the children were threatened with mistreatment or abuse in [the father's] care due to the parents' extreme difference in age." (*In re Marriage of W[.]* (2007) 155 Cal.App.4th 963, 970.) In its written order, the family court first directed "the children 'be deposited and held in protective custody and placed at the discretion of the Director of the Department of Child Protective Services

pending their return to Germany.’” Later in the order, however, the court stated, “‘As to California, Mother shall have exclusive custody of the children until their return to Germany and until such time that Germany Courts have accepted Jurisdiction to adjudicate any rights that Father may or may not have there.’” (*Ibid.*)

Detention and Jurisdiction

On October 20, when the mother filed her petition in the family court alleging abuse by the father, the family court referred the children to SSA, and they were detained on October 20 and placed in Orangewood Children’s Home. After the intake social worker reviewed the reports and interviewed the children, she concluded that the allegations of general neglect by the mother were substantiated but the allegations of general neglect by the father were not. The intake social worker released the children to the father in the morning of October 24. After the family court gave exclusive custody to the mother, however, SSA redetained the children in the afternoon of October 24, fearing “that the children [would] be in danger for neglect if left in the care of the mother and allowed to return to Germany.” The intake social worker recommended placing the children with the father with protective orders. The juvenile court ordered the children detained on October 27, 2006.

On November 17, the jurisdiction hearing began. The case had been assigned to social worker Kimberlee McCall. She reported that both children were “extremely protective of their mother,” but admitted that she drinks excessively. “[J.A.W.] told [the social worker] that her mother will drink until she passes out[,] and [D.W. Jr.] admitted to this same social worker that his mother drinks ‘a lot.’” The children stated they enjoyed living with their father in California. But the social worker expressed her concern “about the father’s sexual abuse history with the children’s mother. When their sexual relationship began, the mother was fifteen years old and his student. There was roughly a thirty-year age difference between them. The father’s decision to engage in a sexual relationship with a minor is not only illegal but is also a

major ethical breach [*sic*] in the educational profession. . . . This is significant from a treatment perspective because the undersigned has no documentation that the father has successfully completed any kind of sexual abuse program. . . . If placed with the father, without treatment, the undersigned believes that not only are the children . . . at risk of being sexually abused but the children's friends are at risk as well." McCall recommended reunification services for both parents.

The children remained in Orangewood for about one month. On November 16, 2006, they were placed with the I.'s, long time friends of the father. The mother was very upset about this and told the children, "Now your new parents have put me out and I'm not your real mother anymore." The mother refused to cooperate with the social worker and continued to make inappropriate comments during the monitored visits and during telephone calls with the children. Despite McCall's explanations "about the Court's expectations regarding not discussing the case with the children or speaking negatively about the children's father, the Juvenile Court process or Social Services," the mother "completely ignored" instructions. McCall stated, "This blatant disregard for the Court demonstrates the mother's immaturity and shows an unconscionable disregard for her children's emotional well-being."

On the first day of trial, the juvenile court spoke on the telephone with Susan Rohol, a representative of the Office of Children's Issues, United States Central Authority, Hague Convention on the Civil Aspects of International Child Abduction. The telephone call was conducted on the speakerphone in chambers, with all counsel present. Also present was Jim Bacin, a deputy District Attorney. Rohol called to follow up on a letter sent to the court from the same office. Both the letter and Rohol opined that the juvenile court did not have jurisdiction over the case because the family court had granted the mother's application under the Hague Convention to return the children to Germany. The deputy District Attorney agreed and lodged an objection to the proceedings. The father informed the court that he had filed an appeal of the family law ruling.

The mother argued the appeal did not stay the Hague Convention proceedings and urged the court to immediately return the children to Germany. The court stated it had more information about the case than the family law court had because the children were not represented in that case. “The court is concerned about the parents’ rights, but the court is concerned about the children. The children were not interviewed, and no information from the children was made available to [the family law court]. This court has information from the children and is concerned about that information.” The court stated it would continue to hear evidence in the dependency case.

The court heard testimony over several court days from November 17 through December 29, 2006, and took the case under submission. It issued written jurisdiction findings in excess of 80 pages on March 15, 2007. The court sustained the allegations of the petition, finding that the mother’s unresolved substance abuse and anger problems placed the children at risk, as did the father’s unresolved sexual abuse history. The court also found the mother had emotionally abused her children since they were detained in October 2006.

Disposition

On February 23, 2007, the court heard SSA’s request that the mother not bring a firearm within 100 feet of a county facility or any person involved with the case. The mother testified she owned a 357 magnum revolver. The court issued a protective order that neither the mother nor the father was permitted to bring any weapon within 100 yards of any designated visitation location or near any person transporting the children.

On March 21, 2007, the court appointed Dr. Jody Ward to perform psychological evaluations of the mother, the father, and the children. (Evid. Code, § 730.) The court ordered the evaluations to be completed by May 18 and set the disposition hearing for May 25.

SSA filed reports in April and May setting forth details of the children’s visits with their parents, each of whom visited twice weekly. The mother “continued to

discuss aspects of the case with the children, such as placement and custody. Additionally, the mother speaks negatively about the care provider to the children. During the visits, the mother often becomes angry when redirected and frequently ignores directions from the monitors. On a few occasions, the Sheriff's Special Officer has had to intervene to assist the monitor in terminating the visit." The Sheriff's Special Officer told the social worker that "the mother's behavior is often disruptive, hostile and unpredictable," and she was concerned about "the safety of the children, parents and staff who are also visiting at the Eckhoff building." The officer had received several complaints about the mother's behavior. The social worker reported the children were bonded to the mother and enjoyed spending time with her, but her behavior left them emotional and in tears. They were upset by her inconsistent attendance and negative attitude. The visits with the father went well.

The mother began attending parenting classes and drug and alcohol testing. But despite prompting by the social worker, the mother refused to participate in an alcohol abuse treatment program. The mother also continued her disruptive and negative behavior; at one point she called the visitation monitor a "fucking Nazi" after a visit was terminated.

The psychological evaluation reports prepared by Ward were submitted to the court. Ward found that the mother had been seriously dependent on alcohol since she was a teenager. She also suffered from a borderline personality disorder, "which is a pervasive pattern of instability in interpersonal relationships, self-image[] and affects, [characterized by] marked impulsivity This is the source of her erratic behavior, impulsivity, suicidal threats and threats of violence, her inability to control her anger, and her transient paranoid symptoms." Ward opined that the mother posed "a serious risk of violence to herself and others The mother has made many credible threats of violence, particularly toward the foster mother"

Ward “strongly recommend[ed]” the discontinuance of all the mother’s visits and telephone calls with the children “until the mother successfully completes one year of residential substance abuse treatment” because the visits were harmful. “There are reports that the mother has become physically intimidating, disruptive, unpredictable, yelling, cursing, and screaming. . . . The phone calls have been just as negative.” Ward recommended gradually reintroducing the mother and children to visits after the completion of the residential program, with strict rules for discontinuance if the mother relapses into inappropriate behavior. “Structure and boundaries are very important to those who are suffering from Borderline Personality Disorder.”

On July 30, the court issued a temporary restraining order enjoining “[b]oth parents . . . from molesting, attacking, striking, sexually assaulting, stalking , battering, or disturbing the peace of each other, of both of the children, . . . and of the foster parents, . . . and of any social workers.” The court explained that the temporary order did not restrain the mother from having visits with the children “at this time. That will be a call for another day.” The court set a hearing for mid-August on an order to show cause why the restraining order should not be made permanent. The court also ordered the mother to surrender her firearms to the Pasadena police within 72 hours and not to have a firearm in her possession unless “under direct supervision of military authority”

The mother’s visits became even more difficult in August. The social worker recommended terminating all visits “until the . . . mother has addressed her alcohol abuse problem in an inpatient alcohol treatment program and addresses her mental health problems in individual therapy.” The children were reacting negatively to visits and expressed fear of the mother. D.W. Jr. reported the mother had encouraged him to run away from his foster home. J.A.W. cried after visits. J.A.W.’s therapist said that the child “does not report anything positive about her mother.” The mother threatened to kill the foster mother. SSA exercised its discretion to suspend visits

temporarily pending the disposition hearing because they were detrimental to the children.

The mother's compliance with drug and alcohol testing was slipping. She still had not started individual therapy or an alcohol abuse prevention program. She also refused to turn over her weapons to the Pasadena police as previously ordered by the court, telling the children that no judge could make her give up her weapon. The court issued a bench warrant for her arrest on October 2. A few days later, the mother was sent to Virginia by the military for a two-month assignment.

The disposition hearing began on December 7, 2007. SSA reported the mother had passed out flyers to children at the school where the father taught and had sent emails to the school district human resources office, "demeaning him and calling him a pervert." The mother had also posted videos of the visitation monitors and the children on the internet, together with comments mocking the visitation rules. When the social worker asked the mother about her participation in counseling services through the military, the mother stated it was "'not of your concern.'" Further, "[w]hen asked if she had received any treatment for alcohol abuse, the mother responded, 'I don't fucking drink[,] bitch,' thus the phone call was ended." The children wanted to be placed with their father, and J.A.W. was refusing to talk to the mother. SSA introduced internet postings in which the mother stated she hates all social workers and they should be hung from the highest tree or executed Iraqi style.

At the hearing, the court maintained the restraining orders regarding the mother's possession of firearms and recommended that an order to show cause hearing be set on the matter "when she's apprehended, under Welfare and Institutions Code section 213.5, and that she . . . show cause why a restraining order should not be issued and sent to the justice department." The court also denied the mother's motion to appoint a "defense expert who is a licensed psychologist and a member of [Evidence Code

section] 730 expert panel in Los Angeles County to review the [section] 730 evaluations done by Dr. Jody Ward”

The court declared the children dependents of the juvenile court, adopted a case plan for the parents requiring their participation in therapy and parenting classes. The mother’s counseling requirement also included the issues of anger management, substance abuse, and sexual abuse. She was required to submit to random twice-weekly drug tests and to complete a residential substance abuse program with an emphasis on alcohol abuse.

The mother’s visitation with the children was suspended until she completed the residential program.² When the program was completed, the court ordered that she “be interviewed by SSA to determine if she can interact appropriately with her children. If so, she should be allowed one ten minute monitored visit every two weeks. The visits should be gradually increased in small increments if the mother can complete her visits with absolutely no inappropriate behavior. If the mother engages in even one episode of inappropriate behavior, the visits should be discontinued for another two months, after which time visiting can be attempted again.” The mother’s phone calls to the children were suspended until the monitored visits were successful for three months, at which point she would be allowed one monitored five-minute call per week. “The mother is also to participate in individual therapy and demonstrate the ability to control her emotions and volatility prior to visitation being reinstated. If the children are uncomfortable with the visits or phone calls, they are to be discontinued.”

Restraining Order

On January 7, 2008, the mother was arrested and arraigned pursuant to the October 2007 bench warrant. The court vacated the previous August 2007 restraining

² Although Ward recommended one year of residential substance abuse treatment before visits resumed, the court did not place such a time limit on the residential requirement, merely providing that the program must be approved by SSA.

order, issued a new temporary restraining order, and set an order to show cause hearing for January 31. After argument at the hearing, the court adopted the temporary order as a permanent order restraining the mother from harassing or contacting the father and the caretakers and requiring her to stay away at least 100 yards from them. The order also required the mother to surrender her firearms to local law enforcement within 24 hours. The findings of fact in the order were as follows: “1. The Court has previously issued orders protecting [the father], the caretakers and the children. 2. The Court has previously ordered the mother to surrender her firearm and the mother has refused to do so. 3. The mother has threatened the father and caretakers. 4. The mother has threatened the social worker in this case. The Court further finds that the mother has threatened bodily harm to the protected persons.” The expiration date of the order is January 31, 2011.

DISCUSSION

Juvenile Court Jurisdiction

The mother contends the juvenile court lacked subject matter jurisdiction to make any custody determinations because the family law court granted her Hague Convention petition and ordered the children returned to Germany. We find the juvenile court properly exercised emergency jurisdiction over the children when it detained them in October 2006.

The juvenile court’s emergency jurisdiction over children is authorized by Family Code section 3424, which is part of the Uniform Child Custody Jurisdiction and Enforcement Act (Fam. Code, § 3400 et seq.) (UCCJEA). The purpose of the UCCJEA is “to avoid jurisdictional competition and conflict, promote interstate cooperation, litigate custody where child and family have closest connections, discourage continuing conflict over custody, deter abductions and unilateral removals of children, avoid relitigation of another state’s custody decisions, and promote exchange of information and other mutual assistance between courts of sister states.” *In re C.T.* (2002) 100

Cal.App.4th 101, 106.) The UCCJEA governs both juvenile dependency proceedings and international custody disputes. (*Ibid.*)

The UCCJEA includes a provision for temporary emergency jurisdiction over children whose home state is not California or are otherwise not subject to California jurisdiction. Family Code section 3424, subdivision (a) provides: “A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to, or threatened with, mistreatment or abuse.” The statute expresses the legislative intent to expand the grounds for temporary emergency jurisdiction. (§ 3424, subd. (e).) “The courts have interpreted ‘emergency’ as a situation in which a child is in immediate risk of danger if returned to a parent’s care.” (*In re Nada R.* (2001) 89 Cal.App.4th 1166, 1174.)

The juvenile court here had sufficient evidence to justify the assertion of emergency jurisdiction in October 2006. SSA’s investigation revealed that the children needed protection from the mother due to her unresolved mental health issues, her substance abuse problems, and her history of neglecting the children. Both children told the social worker the mother often drank to the point of passing out and they did not feel safe with her when she was drinking. J.A.W. said that she and D.W Jr. “were usually home” when the mother was drinking. SSA released the children to the father on the morning of October 24. In the afternoon of that same day, however, the family court granted exclusive custody of the children to the mother and ordered the father to return them to her. Instead, SSA advised the father to return the children to Orangewood, where they were re-detained because they would “be in danger for neglect if left in the care of the mother and allowed to return to Germany.”

The juvenile court also acted properly when it continued to exert emergency jurisdiction over the children while it adjudicated the dependency petition. During the months of November and December 2006, the mother’s deportment with the

children became more and more angry and negative, and she engaged in hostile exchanges with the foster mother. The juvenile court found the mother continued to emotionally abuse her children during the time the hearing was being conducted. Furthermore, the mother denied any problems with alcohol, despite voluminous evidence to the contrary. “[A]n emergency can exist so long as the reasons underlying the dependency exist.” (*In re Nada R.*, *supra*, 89 Cal.App.4th at p. 1175.)

The juvenile court also complied with the requirement that a court asserting emergency jurisdiction must communicate with the foreign court where a custody proceeding is pending. Subdivision (d) of section 3424 provides: “A court of this state that has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, shall immediately communicate with the other court.”

Testimony from the German social services agency indicated that Germany would not be the appropriate jurisdiction for the children’s custody orders. The juvenile court contacted the German court in December 2006, and a reply was received in February 2007. The German court indicated its lack of interest in the case and its belief that California was the more appropriate jurisdiction.

The mother argues that even if the juvenile court acted properly in asserting emergency jurisdiction, such jurisdiction is limited in time. It does not confer subject matter jurisdiction to adjudicate the allegations in a dependency petition and make a disposition order. (*In re C.T.* (2002) 100 Cal.App.4th 101, 108-109.) We find the juvenile court’s emergency jurisdiction “ripened into permanent jurisdiction . . .” (*In re Angel L.* (2008) 159 Cal.App.4th 1127, 1140.)

Family Code section 3421, subdivision (a), as relevant here, provides: “Except as otherwise provided in Section 3424 [temporary emergency jurisdiction], a court of this state has jurisdiction to make an initial child custody determination only if

any of the following are true: [¶] . . . [¶] (2) [A] court of the home state of the child has declined to exercise jurisdiction on the grounds that this state is the more appropriate forum under Section 3427³ . . . and both of the following are true: [¶] (A) The child and the child's parents . . . have a significant connection with this state other than mere physical presence. [¶] (B) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships.”

Germany was clearly the children's home state for purposes of jurisdiction because they lived there within the six month period preceding the children's detention in California. But the German court expressed its belief that California would be a better place to adjudicate custody issues “as the parents and the children are now living in the United [S]tates” and asked the mother's German attorney to “take back” the petition for child custody. The family has significant connections to Orange County. The father has lived and worked here since 1995; the family lived in Garden Grove for three years, from 1995 to 1998; D.W.Jr. was born here; and the mother has relocated here. Much of the evidence relevant to the dependency proceedings is in Orange County because all members of the family are present here, and SSA's social workers and other personnel who have investigated the current allegations are present here. Other witnesses who are absent from Orange County were able to testify here by telephone. Thus, the elements of permanent jurisdiction are satisfied.

The mother argues the juvenile court was bound by the family law court's previous determination that she had met the initial burden of proving the children were wrongfully removed from Germany and they should be returned there under the Hague Convention. But the mother misunderstands the nature of juvenile dependency jurisdiction. “[T]he prior jurisdiction of a divorce court d[oes] not defeat juvenile court

³ Section 3427 provides that a court with jurisdiction to make a child custody order may decline to exercise its jurisdiction “if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum.” (Fam. Code, § 3427, subd. (a).)

jurisdiction since the purpose of the divorce court [is] to decide if a marriage [is] to be dissolved and to provide for the custody of children, if necessary, while the juvenile court [is] charged with the protection of children.” (*In re Desiree B.* (1992) 8 Cal.App.4th 286, 292.) These significant differences in purpose mean that “the “issues” before the family law court and juvenile court can never, in fact, be “identical,” even if some or all of the facts of abuse or neglect adduced in the two proceedings are the same” (*Id.* at p. 293; see also *In re Travis C.* (1991) 233 Cal.App.3d 492, 498-503.)

The juvenile court properly exercised dependency jurisdiction over the children based on the circumstances before it. As the juvenile court correctly observed, the family court did not have all the evidence before it when making its ruling that was available to the juvenile court. The juvenile court found the family court order inconsistent and flawed, a finding that was confirmed by this court in its review of the family court proceedings in *In re Marriage of W[.]*, *supra*, 155 Cal.App.4th 963. This court reversed and remanded the family court proceedings, holding that “the trial court erred in failing to make factual findings regarding certain enumerated exceptions to the children’s return under the [Hague] Convention, and in awarding temporary custody of the children to [the mother] without considering whether doing so would pose a substantial risk of harm to them.” (*Id.* at p. 967.) Further, this court took judicial notice of the pending juvenile dependency proceedings and observed, “[A]ny further [family] court proceedings regarding custody of the children on remand must await termination of the juvenile proceedings.” (*Id.* at p. 976.)

“The [Hague] Convention, to which the United States and Australia are both signatories, was adopted in an effort ‘to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access.’ [Citation.] To deter parents from crossing international boundaries to secure a more favorable forum for the adjudication of custody rights, the

[Hague] Convention provides for the prompt return of a child who is ‘wrongfully removed to or retained in’ any country that has signed on to the Convention. [Citations.] It thus provides a means by which to restore the status quo when one parent unilaterally removes the child from the child's country of habitual residence and/or retains the child in a new jurisdiction. [Citation.]” (*In re Marriage of Eaddy*, *supra*, 144 Cal.App.4th at p. 1210.) Under the unique facts presented by this case, the juvenile court was correct to protect the children while the validity of the family court order was on appeal.

Disposition Orders

The mother contends the visitation order is erroneous and must be reversed because it constitutes a complete denial of visitation without the necessary showing that visitation would be detrimental to the children. We agree that visitation is a fundamental part of family reunification. Welfare and Institutions Code section 362.1 provides: “In order to maintain ties between the parent or guardian and any siblings and the child, and to provide information relevant to deciding if, and when, to return a child to the custody of his or her parent or guardian, or to encourage or suspend sibling interaction, any order placing a child in foster care, and ordering reunification services, shall provide . . . for visitation between the parent or guardian and the child. Visitation shall be as frequent as possible, consistent with the well-being of the child.” (Welf. & Inst. Code, § 362.1, subd. (a)(1)(A))

If visitation is detrimental to the child, however, it can be curtailed. (*In re Mark L.* (2001) 94 Cal.App.4th 573, 580; *In re Julie M.* (1999) 69 Cal.App.4th 41, 49-50.) There is substantial evidence in the record to support the conclusion that visitation under the circumstances existing at the time of the disposition order was detrimental to the children. In July 2007, Ward reported her conclusion that the mother’s visits were harmful to the children. In October, Ward testified that the visits would continue to be harmful and recommended that they be discontinued for a year. She made this recommendation after “balancing between the children’s desire to continue a relationship

with Mom and the harm caused by it” In the intervening months, the children had begun expressing fear of the mother and exhibiting negative behaviors after visits.

The court here did not deny visitation outright; it suspended it until the mother completed a certain portion of her case plan and was able to interact appropriately with her children. These were reasonable conditions on visitation that accommodated the interests of the mother and the children.⁴

The mother complains the court improperly delegated visitation decisions to SSA because it had the responsibility to determine whether her behavior justified the resumption of visits. A juvenile court must define the parent’s right to visit a dependent child who has been removed from parental custody, but it need not specify the details of the visitation. The time, place, and manner of visits are properly delegated to SSA. (*In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1373-1374.)

The court’s order here did not give SSA unlimited discretion to decide whether visits should occur. Rather, the order set out guidelines for SSA to follow when making its determination whether the mother was ready to visit: the completion of a portion of her case plan and the ability to interact appropriately with her children. Once those conditions were fulfilled, visits would occur under the order.

The mother’s final attack on the disposition orders is her contention that the court erroneously denied her request for an additional expert, to be paid for by public funds, to counteract Ward’s bias against her. We disagree.

The decision whether to appoint an expert is within the discretion of the court. “‘Refusal to appoint a second expert to examine any particular issue will

⁴ Pursuant to SSA’s request, we take judicial notice of the following events occurring after the disposition order was entered. (Evid. Code, § 452, subd. (d)(1).) At the 18-month review hearing held in July 2008, the children were placed with the father under a plan of family maintenance. The court modified the mother’s case plan to strike the requirement that she complete a residential substance abuse program. The visitation order was modified to strike the requirement that she complete both inpatient and outpatient substance abuse programs before she could visit the children; her visitation could begin “once SSA determines mother can interact appropriately with her children”

ordinarily not constitute abuse of discretion.’ [Citations.]” (*In re Jennifer J.* (1992) 8 Cal.App.4th 1080, 1084.) Ward was appointed as a neutral evaluator, and the mother makes no attack on her qualifications. The mother’s claim of bias is nothing more than a disagreement with Ward’s negative evaluation of her ability to parent. She has failed to show a need for a second expert.

Restraining Order

The mother contends there is no substantial evidence to support the issuance of the permanent restraining order because it denies her any contact with her children for three years, it was overly broad, and it was supported by old allegations. We disagree.

The Welfare and Institutions Code authorizes a juvenile court to issue an order “enjoining any person from contacting, threatening, molesting, attacking, striking, sexually assaulting, stalking, battering, or disturbing the peace of any parent . . . or current caretaker of the child, regardless of whether the child resides with that parent . . . or current caretaker” (§ 213.5, subs. (a) & (d).) The order can stay in effect for no more than three years from the date of issuance. (§ 213.5, subd. (d).)

We review the issuance of a restraining order under section 213.5 to determine if it is supported by substantial evidence. (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 210-211.) There is ample evidence to support the order here.

The history of this case is replete with incidents of the mother’s belligerent and disruptive behavior. She flouted the visitation rules and the rules of decorum in the courtroom, resulting in her repeated removal from visits and court proceedings. She exhibited intense anger and a complete inability to control it. She threatened to kill the foster mother. She expressed her wish that all social workers be hung or executed “Iraqi style.” She hounded the father at his place of employment, posted statements on the internet claiming the father was a pervert and the caretakers had beaten and molested her children. Coupled with the mother’s troubling demeanor was her possession of a firearm,

which she refused to surrender to authorities even after being ordered to do so by the court.

The mother points out that she had not made any threats or engaged in any troublesome conduct during the four months preceding the order. But the record belies this assertion. Her belligerent attitude in court and towards the social workers continued without abatement. She continued her refusal to surrender her firearm or provide proof that she no longer possessed it. The court was appropriately concerned about the safety and peace of mind of the father and the caretakers. Its order restraining the mother from harassing or contacting them, restraining her from coming within 100 yards of them, and requiring her to surrender her firearm was eminently reasonable.

The mother complains the restraining order prevents her from visiting the children for three years and is thus inconsistent with the court's disposition order. But the restraining order does no such thing. The preprinted form prevents the restrained person from visiting minor children who are listed as persons to be protected by the order. The children are not listed as persons to be protected by the order.

DISPOSITION

The judgment and order are affirmed.

SILLS, P. J.

WE CONCUR:

RYLAARSDAM, J.

IKOLA, J.